

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alex Starace	Team: Team # 8	CCRB Case #: 200914027	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 09/07/2009 3:45 AM	Location of Incident: corner of Dyckman Street and Nagle Avenue	Precinct: 34	18 Mo. SOL 3/7/2011	EO SOL 3/7/2011	
Date/Time CV Reported Mon, 09/07/2009 4:38 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/07/2009 4:38 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			MN IRT
2. SGT Howard Zweben	03711	933512	MN IRT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alexander Kremer	25511	947788	MN IRT
2. POM Sunil Gidarisingh	27921	945759	MN IRT
3. POM Christoph Walton	26084	947870	MN IRT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Howard Zweben	Abuse: Sgt. Howard Zweben stopped § 87(2)(b)	
B. Officers	Force: Officers used physical force against § 87(2)(b)	
C.SGT Howard Zweben	Discourtesy: Sgt. Howard Zweben spoke obscenely to § 87(2)(b)	
D.SGT Howard Zweben	Abuse: Sgt. Howard Zweben threatened § 87(2)(b) with the use of force.	
E.SGT Howard Zweben	Off. Language: Sgt. Howard Zweben made remarks to § 87(2)(b) based upon race.	
F.SGT Howard Zweben	Off. Language: Sgt. Howard Zweben made remarks to § 87(2)(b) based upon ethnicity.	

### Case Summary

On September 7, 2009, § 87(2)(b) called the CCRB to file a complaint.

On September 7, 2009, at approximately 3:45 am, PO Alexander Kremer of the Manhattan North Impact Response Team issued two summonses to § 87(2)(b) on the corner of Dyckman Street and Nagle Avenue in Manhattan. § 87(2)(b)'s interactions with the officers during the incident resulted in the following allegations:

**Allegation A – Abuse of Authority:** Sgt. Zweben forcibly stopped § 87(2)(b) for drinking from an open container of alcohol in public view. § 87(2)(b), § 87(2)(g)

**Allegation B – Physical Force:** § 87(2)(b) claimed that four officers tackled him to the ground to stop him. § 87(2)(b), § 87(2)(g)

**Allegation C – Discourtesy; Allegation D – Abuse of Authority; Allegation E – Offensive Language:** Sgt. Zweben allegedly spoke obscenely to § 87(2)(b) threatened § 87(2)(b) with force, and used offensive language when speaking to § 87(2)(b) § 87(2)(g)

**Allegation F – Offensive Language:** § 87(2)(b), § 87(2)(g)

*Note:* During his in-person statement to the CCRB, § 87(2)(b) also alleged that PO Christopher Walton of the Manhattan North Impact Response Team attempted to plant illicit drugs in § 87(2)(b)'s brown paper bag. A spin-off (CCRB case number 200916169) was created for this allegation and sent to IAB.

### Results of Investigation

#### Civilian Statement(s)

**Complainant:** § 87(2)(b)

- § 87(2)(b) was § 87(2)(b)

#### § 87(2)(b)'s CCRB Interview Statement (encl. 5A-D)

On October 14, 2009, at 3:15 pm, § 87(2)(b) made the following sworn statement in the CCRB's offices:

On September 7, 2009, at 3:25 am, § 87(2)(b) exited his apartment at § 87(2)(b) in Manhattan. A friend of § 87(2)(b)'s had borrowed his headphones and had arrived at the front door to the building to return them. § 87(2)(b) went downstairs and picked up his headphones. § 87(2)(b)'s friend then got in a taxicab and left.

§ 87(2)(b) decided not to go back into his apartment, but instead to get a snack for himself and his wife. Several blocks away, § 87(2)(b) entered an empanada shop and bought a cup of juice. The juice was non-alcoholic. It was given to him in a clear plastic cup with ice. The cup had a plastic lid on it and it also had a straw. § 87(2)(b) then exited the empanada

shop and went to the bodega on the corner of Dyckman Street and Post Avenue. § 87(2)(b) bought vanilla wafers and chocolate cookies. The cashier put the food in a small brown paper bag and handed it to § 87(2)(b) who then left the store and headed home.

As he was walking home, § 87(2)(b) had his headphones in his fanny pack, which was dangling off his wrist, and he had his juice drink in one hand and his bag of cookies and wafers in the other. § 87(2)(b) was wearing flip-flops, a pair of shorts, and a t-shirt. He did not have identification on his person. When § 87(2)(b) approached the corner of Dyckman Street and Nagle Avenue, § 87(2)(b) saw five police officers next to a marked van. The officers were interacting with a severely inebriated Hispanic male.

§ 87(2)(b) quickly turned the corner and continued walking towards his house at § 87(2)(b). § 87(2)(b) explained that he is deaf out of his right ear, and so his hearing is not very good. § 87(2)(b) was drinking his juice when he saw out of the corner of his eye that PO Walton had run up to him and stopped right in front of § 87(2)(b). § 87(2)(b) was stopped right next to a gray “trash-holder” on Nagle Avenue, approximately 8-10 feet from the police van. PO Walton said to § 87(2)(b) “Don’t you know when people tell you to stop?” **(Allegation A)**

§ 87(2)(b) had not heard anyone tell him to stop. § 87(2)(b) was surrounded by PO Walton, PO Gidarisingh, PO Kremer and PO4. PO Walton grabbed § 87(2)(b) by his t-shirt, near his shoulders. PO Gidarisingh, PO Kremer and PO4 wrapped their arms around § 87(2)(b)'s torso, as though in a bear-hug. The officers then shouted, “Give me your arms! Stop resisting arrest!” as they slammed § 87(2)(b) to the ground. All four officers went to the ground with § 87(2)(b)'s forehead hit the ground first and it started bleeding. § 87(2)(b)'s right forearm also hit the ground just after his forehead and scraped against an air grate; as a result, § 87(2)(b)'s forearm sustained an abrasion. As soon as § 87(2)(b) was on the ground, he put his hands behind his back. An unknown officer stepped on his left shoulder, which aggravated a previous injury. He later stated that the officers slammed his shoulder to the ground. Once § 87(2)(b) was on the ground, an officer § 87(2)(b) did not know which had his knee on § 87(2)(b)'s neck. The four officers started yelling at § 87(2)(b) “Stop resisting arrest!” § 87(2)(b) was then handcuffed.

Sgt. Zweben was standing next to the incident and was yelling at § 87(2)(b) “You asshole! When we tell you to stop, you stop!” **(Allegation C)** Sgt. Zweben then started shouting at § 87(2)(b) “Stop resisting arrest! Stop resisting arrest! You’re resisting arrest.”

§ 87(2)(b) told Sgt. Zweben, “Asshole! I’m already handcuffed.”

While § 87(2)(b) was still on the ground, Sgt. Zweben was pacing back and forth and showed § 87(2)(b) his asp. Sgt. Zweben said to § 87(2)(b) “You see this?” **(Allegation D)** § 87(2)(b) said, “Yeah, it’s a baton.” Sgt. Zweben replied, “It’s a nigger-beater. **(Allegation E)** You want me to beat your knees? I’ll break your kneecaps right now and make sure you don’t go to the hospital for three days. I’ll make you sit in Central Booking. Do you want to sit in Central Booking?”

§ 87(2)(b) said, “I’ve been there before. It doesn’t phase me. If you think you’re scaring me, realistically, I mean, come on.” At one point during his interaction with Sgt. Zweben, § 87(2)(b) also told Sgt. Zweben, “Go ahead, break my knees. See how many millions I’ll have from you.”

Sgt. Zweben was also making racial remarks, such as, “Where’s your green card? What part of Mexico are you from? Where are your friends?” **(Allegation F)**

After § 87(2)(b) was handcuffed, he was sat on the ground, next to the gray “trash-holder” by the bodega. PO Kremer and PO Gidarisingh were talking to § 87(2)(b) and gathering information to put on § 87(2)(b)'s summonses. PO Kremer and PO Gidarisingh asked § 87(2)(b) for his name. § 87(2)(b) stated that his name was § 87(2)(b). Sgt. Kremer

started shouting, “Your name is § 87(2)(b) Right, Mexican § 87(2)(b) What part of Mexico are you from, § 87(2)(b) Where’s your green card, § 87(2)(b) As a result, both of § 87(2)(b)s summonses have him listed as § 87(2)(b) had given the officers his correct information.

After § 87(2)(b) was released from his handcuffs, Sgt. Zweben was pacing behind PO Walton with his asp drawn. PO1 told § 87(2)(b) “Go, just go. Just go to court.” § 87(2)(b) said, “Oh, I’m going to court. I’ll see you in court, too.” § 87(2)(b) then walked home.

**§ 87(2)(b)s CCRB Intake Statement (encl. 4B)**

On September 7, 2009, at 4:30 am, § 87(2)(b) made the following statement on the CCRB’s call processing system:

On September 7, 2009 at approximately 3:45 am, § 87(2)(b) observed four officers interacting with an unidentified Hispanic male near the corner of Dyckman Street and Nagle Avenue. § 87(2)(b) was carrying a pack of cookies in a brown bag, a plastic container of tropical juice, and headphones. As he passed, the officers asked what he was doing in the street. All of a sudden, PO Walton jumped out of the nearby marked police van and forced him to the ground. PO Walton, PO Kremer and PO Gidarisingh and Sgt. Zweben all beat him, an officer stepped on his neck, and he was handcuffed. § 87(2)(b) sustained a bruise to his elbow, a pained shoulder, and a cut over his right eye, which bled. § 87(2)(b) stated that he had pictures of the injuries. Sgt. Zweben, whose asp was out, asked, "Would you like me to break your kneecaps with my stick?" Sgt. Zweben also said that if he wanted to, § 87(2)(b) would go to jail for 72 hours and wouldn't come out for three days. § 87(2)(b) received two summonses for an open container.

**Photographs Provided by § 87(2)(b) (encl. 5I-N)**

On October 28, 2009, § 87(2)(b) emailed six photographs to the undersigned. One photograph is a tableau of what § 87(2)(b) was supposedly holding during the incident. (Note that § 87(2)(b) told the investigation off the record that the photograph of these objects was a reconstruction of the objects and not the actual objects themselves.) The other five photographs document scrapes on § 87(2)(b)s forehead and elbow. (These latter five photographs are putatively authentic. The photographs were not time-stamped, but during his interview § 87(2)(b) stated that they were taken within several hours of the incident.)

**Civilians Not Contacted**

The investigation wanted to speak to the individual who dropped off § 87(2)(b)s headphones, in order to get more contextual information. However, § 87(2)(b) refused to provide any information about this individual, other than that he was male. He was therefore not contacted.

The inebriated Hispanic male who was stopped on the corner when § 87(2)(b) passed the officers was not contacted. By both the officers’ and § 87(2)(b)s accounts, the male was severely inebriated. Because this individual’s credibility would be inherently degraded by his inebriation and because, as a result, his statement almost certainly would not have altered the findings based on the statements already collected, this male was not contacted.

## **NYPD Statement(s):**

### **Subject Officer: SGT HOWARD ZWEBEN**

- *At the time of the incident, Sgt. Zweben was § 87(2)(b).*
- *Sgt. Zweben was working from 5:15 pm on September 6, 2009 to 5:12 am on September 7, 2009. He was working with PO Gidarisingh, PO Kremer and PO Walton. He was an IRT supervisor for the IRT conditions work. He was in uniform and working out of a marked vehicle.*

### **CCRB Interview Statement**

On the corner of Dyckman Street and Nagle Avenue, Sgt. Zweben had witnessed an individual (not § 87(2)(b)) drinking alcohol on the corner. PO Gidarisingh had stopped that individual and began writing him a summons. At his time, § 87(2)(b) walked by the scene holding a cup, out of which came the odor of Hennessey. § 87(2)(b) was approximately ten feet away from the officers.

Sgt. Zweben told § 87(2)(b) to stop and come over to the police officers. Sgt. Zweben made this request three times. § 87(2)(b) looked at Sgt. Zweben and gave him a “dumbfounded” look and then continued walking past the officers. PO Walton and Sgt. Zweben walked towards § 87(2)(b). Sgt. Zweben said to § 87(2)(b) “I told you to come over here three times.”

§ 87(2)(b) said, “I thought you had the other guy stopped.”

Sgt. Zweben said, “Well, what are you drinking in the cup?” Sgt. Zweben could smell a very strong odor of Hennessey.

When § 87(2)(b) had initially been told to stop, Sgt. Zweben thought there may have been a language barrier that had prevented § 87(2)(b) from understanding, but in speaking with him, it became clear that § 87(2)(b) had no trouble understanding Sgt. Zweben. However, § 87(2)(b) was not stopping.

So, Sgt. Zweben grabbed one of § 87(2)(b)'s arms and PO Walton grabbed another of § 87(2)(b)'s arms. § 87(2)(b) didn't try to punch or attack, but he did intentionally keep his arms away from his body and would not allow the officers to easily handcuff him. § 87(2)(b) was not taken to the ground during the course of being handcuffed. § 87(2)(b) was holding his arms to his side. § 87(2)(b) was saying that he was a bouncer and wanted to know why the officers were stopping him. Regardless, PO Walton and Sgt. Zweben did handcuff § 87(2)(b) without further incident.

Once § 87(2)(b) was placed in handcuffs, he was then sat down on the ground in front of a dumpster. He was never thrown to the ground or placed face-first on the ground. § 87(2)(b) was simply placed on his rear-end. § 87(2)(b) kept telling the officers, “You got that guy stopped. What are you worried about me?” § 87(2)(b) kept saying that he was a bouncer. One of the officers got § 87(2)(b)'s ID and ran a warrant check on him. § 87(2)(b) felt that he was unfairly selected and that the officers should have continued issuing a summons to the original person and should have ignored him. § 87(2)(b) also stated that he had worked for the board of education.

Sgt. Zweben did not remove his asp during the incident. Sgt. Zweben did not see any injuries on § 87(2)(b) either before he was stopped, or as a result of anything that took place during the stop. § 87(2)(b) was not bleeding at any point during the interaction.

Sgt. Zweben did not call § 87(2)(b) an “asshole.” Sgt. Zweben did not refer to his asp as a “nigger-beater,” Sgt. Zweben did not threaten to break § 87(2)(b)'s kneecaps, and Sgt.

Zweben did not tell § 87(2)(b) that if he broke his kneecaps, he'd make sure § 87(2)(b) wouldn't go to the hospital.

Sgt. Zweben made no reference to § 87(2)(b)'s country of origin, nor to § 87(2)(b) being from Mexico, nor to the possibility of § 87(2)(b) having a green card. Sgt. Zweben did not refer to § 87(2)(b) as '§ 87(2)(b)'.

PO Kremer wrote the summons for § 87(2)(b). Sgt. Zweben was not sure how PO Kremer got § 87(2)(b)'s identification information to fill out the summons. Sgt. Zweben did not recall § 87(2)(b) identifying himself verbally.

**Witness Officer: PO CHRISTOPHER WALTON**

- *PO Walton was § 87(2)(b) years old at the time of the incident. He is a § 87(2)(b).*
- *PO Walton was working from 5:30 pm on September 6, 2009 to 10:00 am on September 7, 2009. He was in uniform. His assignment was foot posts #15 and #16. His partners were Sgt. Zweben, PO Kremer and PO Gidarisingh. The officers were assigned to van 5935.*

**CCRB Interview Statement**

On September 7, 2009, at approximately 3:45 am, PO Walton was in the police van on the corner of Dyckman Street and Nagle Avenue, writing an individual a summons, but he could see out of the van.

Another individual, § 87(2)(b) was asked by Sgt. Zweben and PO Kremer to stop because they had seen § 87(2)(b) drinking Hennessey whisky. (PO Walton was not the officer who identified § 87(2)(b) as potentially drinking alcohol.) § 87(2)(b) turned his head and looked at the officers, but then continued walking. § 87(2)(b) definitely heard the officers. § 87(2)(b) was asked to stop at least three times.

Sgt. Zweben and PO Kremer approached § 87(2)(b). The officers then stood in front of § 87(2)(b) who was violently making gestures with his arms. § 87(2)(b) was shouting and was belligerent. PO Kremer told § 87(2)(b) to turn around, which he did, and then PO Kremer rear-cuffed § 87(2)(b) and sat § 87(2)(b) against a wall next to a garbage can. § 87(2)(b) was physically compliant, but he was shouting during the incident. § 87(2)(b) was a no point in the interaction placed face-first on the ground. § 87(2)(b) was not ever tackled by officers at the location.

Sgt. Zweben did not have any verbal interaction with § 87(2)(b) after he was handcuffed. Sgt. Zweben did not remove his asp during the interaction. Sgt. Zweben did not threaten to break § 87(2)(b)'s kneecaps. Sgt. Zweben did not call § 87(2)(b) an asshole. Sgt. Zweben did not tell § 87(2)(b) that he would deny him medical treatment after his kneecaps were broken. Sgt. Zweben did not refer to his asp or baton as a "nigger-beater." Sgt. Zweben never made reference to § 87(2)(b) being from Mexico or being Mexican. Sgt. Zweben never made reference to § 87(2)(b) having a green card.

PO Kremer confirmed that § 87(2)(b) was drinking Hennessey. PO Kremer issued § 87(2)(b) the summons. PO Walton did not know how PO Kremer got § 87(2)(b)'s information to fill out his summons. PO Walton did not hear any officer verbally refer to § 87(2)(b) by name.

**Witness Officer: PO ALEXANDER KREMER**

- PO Kremer was § 87(2)(b) years old at the time of the incident. He is a § 87(2)(b).
- PO Kremer was working a Quality of Life overtime shift from 2:05 AM to 8:52 AM on September 7, 2009. He was in uniform. His partners were Sgt. Zweben, PO Gidarisingh and PO Walton. The officers were assigned to van 5629.

**UF-250 Filled Out by PO Kremer (encl. 12A-B)**

Someone named § 87(2)(b) (whom the investigation has determined is § 87(2)(b)) was stopped on suspicion of Criminal Possession of a Weapon. He was placed on the ground and was frisked, but not searched. § 87(2)(b) identified himself verbally.

**CCRB Interview Statement**

PO Kremer and Sgt. Zweben observed § 87(2)(b) with a plastic cup without a straw or lid. The liquid inside the cup was brownish-red, which is the same color as Hennessy cognac.

Because the cup was the same type as those distributed by nearby clubs and because the liquid appeared to be alcohol, PO Kremer and Sgt. Zweben approached § 87(2)(b). Sgt. Zweben requested § 87(2)(b) to stop. § 87(2)(b) looked over his shoulder at the officers and then continued walking. Sgt. Zweben requested § 87(2)(b) to stop two more times. § 87(2)(b) continued walking two more steps before Sgt. Zweben and PO Kremer attempted to physically stop him.

§ 87(2)(b) used his hands to push both PO Kremer and Sgt. Zweben in their chest. Neither officer fell down as a result of the push. PO Kremer and Sgt. Zweben then grabbed § 87(2)(b) by his shoulders and arms and attempted to handcuff him. § 87(2)(b) continued to resist by turning his body and flailing his arms, so PO Walton approached and assisted by pulling § 87(2)(b)'s hands behind his back while PO Kremer and Sgt. Zweben held him and put handcuffs on him. PO Kremer told § 87(2)(b) to stop resisting, but he continued to resist.

§ 87(2)(b) continued to move his body and resist the officers even after he was handcuffed, so PO Kremer led him next to a trash container and placed § 87(2)(b) on the ground so that he was sitting with his buttocks on the ground and his back resting against the trash container. PO Kremer was able to get § 87(2)(b) to the ground by placing his foot behind § 87(2)(b)'s knee and placing him downwards against the trash container. When § 87(2)(b) fell to the ground, he landed on his buttocks. At no point during the interaction was § 87(2)(b) on the ground face-first. No officer placed his knee on § 87(2)(b)'s back while he was on the ground and no officer had to hold § 87(2)(b) on the ground once he was placed on the ground. PO Kremer did not at any point witness any injuries on § 87(2)(b)'s person. § 87(2)(b) was not bleeding at any time during the incident.

Once § 87(2)(b) was placed against the trash container, PO Kremer retrieved § 87(2)(b)'s identification, which was a work ID, and ran a warrant check. (Which returned negative.) The name on the work ID was § 87(2)(b). At no point did § 87(2)(b) ever express to the officers that his name was anything other than § 87(2)(b). No officer made any comments about § 87(2)(b)'s ethnicity. No officer provided PO Kremer with the name § 87(2)(b) as he was writing the summons. PO Kremer then issued § 87(2)(b) a summons for an open container. § 87(2)(b) was then released.

However, § 87(2)(b) did not leave the location. Instead, he stood on the corner yelling remarks at the officers. PO Kremer asked § 87(2)(b) to leave at least three times, but § 87(2)(b) would not leave. As a result, PO Kremer issued § 87(2)(b) a second summons for failure to disperse from the location.

Sgt. Zweben never threatened § 87(2)(b) with further force. Sgt. Zweben never threatened to break § 87(2)(b)'s kneecaps. Sgt. Zweben did not tell § 87(2)(b) that he would make sure he couldn't go to the hospital. Sgt. Zweben did not take his asp out and use it in a threatening manner. Furthermore, PO Kremer stated that Sgt. Zweben rarely, if ever, takes out his asp. No officer took out his asp during the incident. Sgt. Zweben never referred to his asp as a "nigger-beater." No one at the location referred to § 87(2)(b) as an asshole.

**Witness Officer: PO SUNIL GIDARISINGH**

- PO Gidarisingh was § 87(2)(b) old at the time of the incident. He is a § 87(2)(b).
- PO Gidarisingh was working from 5:30 pm on September 6, 2009 to 4:10 am on September 7, 2009. He was the Sergeant's operator. He was in uniform. His partners were Sgt. Zweben, PO Kremer and PO Walton. The officers were assigned to van 5935.

**CCRB Interview Statement**

On September 7, 2009, at approximately 3:45 am, PO Gidarisingh was writing a summons for a male who had been stopped on the corner of Nagle Avenue and Dyckman Street. While PO Gidarisingh was writing the summons, Sgt. Zweben observed another male, identified as § 87(2)(b) walking by the location and drinking alcohol from an open container. Sgt. Zweben requested that § 87(2)(b) stop, but § 87(2)(b) did not comply. Sgt. Zweben asked § 87(2)(b) at least four times to stop. Sgt. Zweben asked PO Kremer and PO Walton to go stop § 87(2)(b). While this was happening, PO Gidarisingh was still writing the summons for the first male, so he was not paying too close attention to these events.

However, § 87(2)(b) became irate at PO Kremer and PO Walton and started moving his arms from side-to-side and shouting and saying that he was a bouncer in New Jersey. The officers decided to handcuff § 87(2)(b). PO Kremer grabbed one of § 87(2)(b)'s arms and placed a handcuff on it and placed it behind § 87(2)(b)'s back while PO Walton grabbed to the other of § 87(2)(b)'s arms and placed it behind his back. Then PO Kremer finished handcuffing § 87(2)(b). As this was happening, § 87(2)(b) was still not compliant and was moving his shoulders back and forth.

Sgt. Zweben instructed the officers to seat § 87(2)(b) next to a trash can at the scene. PO Walton and PO Kremer did this. They placed § 87(2)(b) on his buttocks next to the trash can. Once seated, § 87(2)(b) was leaning against the trash can. At no point was § 87(2)(b) face-down on the ground. The officers asked § 87(2)(b) what was making him so upset. A strong odor of alcohol was coming off of § 87(2)(b). PO Kremer confirmed that § 87(2)(b) had been consuming an alcoholic beverage.

§ 87(2)(b) identified himself with an identification card that he gave to PO Kremer. PO Gidarisingh did not know what type of ID § 87(2)(b) gave PO Kremer. PO Gidarisingh did not recall any officer referring to § 87(2)(b)'s name verbally. No officer referred to § 87(2)(b) as "§ 87(2)(b)". Sgt. Zweben did not repeatedly refer to § 87(2)(b) as "§ 87(2)(b)" and did not state that § 87(2)(b) was from Mexico. No officer referred to § 87(2)(b)'s ethnicity or made reference to § 87(2)(b)'s place of birth.

Sgt. Zweben did not take out his asp during the incident. Sgt. Zweben was not speaking with § 87(2)(b) – PO Kremer was the officer that spoke with § 87(2)(b) directly and that issued him two summons, one for an open container and one for disorderly conduct.

Sgt. Zweben never referred to § 87(2)(b) as an asshole. Sgt. Zweben did not threaten to break § 87(2)(b)'s kneecaps. Sgt. Zweben did not threaten to prevent § 87(2)(b) from receiving medical treatment after his kneecaps were broken. Sgt. Zweben did not refer to his baton as a "nigger-beater."



§ 87(2)(b) was issued two summonses and then he was stood up, was released from his handcuffs, and told to leave the location. PO Gidarisingh did not see any injuries on § 87(2)(b) at the time of incident. When shown a photograph of what § 87(2)(b) alleged were his injuries, PO Gidarisingh stated that the injuries depicted were not consistent with what took place during the incident.

### **NYPD Document(s)**

#### **Summonses (encl. 11A-B)**

PO Kremer issued § 87(2)(b) two summonses, § 87(2)(b), for an Open Container and Disorderly Conduct – Failure to Disperse, respectively.

#### **Warrant Checks (encl. 13A-L)**

Documentation of Warrant Checks was requested from MISD and returned negative.

#### **Summons for Incident and Disposition**

- While both summons number § 87(2)(b) were listed on E-courts on October 14, 2009, as of January 8, 2010, neither summons is listed on either E-courts or OCA. This likely indicates that the summonses were resolved in some manner (encl. 14A-D).

#### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of January 6, 2010, with regard to the incident. (encl. 15A)

#### **Civilian(s) Criminal History**

- As of January 8, 2010, Office of Court Administration records reveal no criminal convictions for § 87(2)(b)

#### **Subject Officer(s) CCRB History**

- Sgt. Howard Zweben has been a member of the service for six years. There are two substantiated CCRB allegations against him. Both stem from case number 200816489, in which the allegations of a stop and of a frisk were both substantiated, with the recommendation that Sgt. Zweben receive instructions for each. (encl. 2A).

### **Conclusion**

#### **Identification of Subject Officer(s)**

With regard to which officer stopped § 87(2)(b)

- In his CCRB in-person statement, § 87(2)(b) claimed that PO Walton initially stood in front of him and told him, “Don’t you know when people tell you to stop?” and that § 87(2)(b) was soon after surrounded by PO Gidarisingh, PO Kremer and PO4 and was then taken to the ground.
- However, in his CCRB intake statement, § 87(2)(b) stated that the “officers” were asking him what he was doing and then PO Walton appeared from out of a car and tackled him.
- Sgt. Zweben stated that he asked § 87(2)(b) to stop, and then he and PO Walton went up to § 87(2)(b) and physically stopped him.
- PO Walton stated that Sgt. Zweben and PO Kremer stopped § 87(2)(b)
- PO Kremer stated that he and Sgt. Zweben physically stopped § 87(2)(b)

- PO Gidarisingh stated that Sgt. Zweben verbally requested that § 87(2)(b) stop, but that PO Kremer and PO Walton physically stopped § 87(2)(b).

While these statements do not perfectly align, it is clear from the officers' statements that Sgt. Zweben in some form either physically stopped § 87(2)(b) or requested other officers to do so for him. Moreover, Sgt. Zweben was the highest-ranking officer at the location, so the decision to stop § 87(2)(b) was ultimately his. Therefore, Allegation A, a stop, is pleaded against Sgt. Zweben.

With regard to the physical force used against § 87(2)(b) alleged in his intake statement and in his in-person statement that multiple officers assisted in taking him to the ground. All of the officers' statements concurred that multiple officers had physical interaction with § 87(2)(b). Therefore, Allegation B, physical force, will be pleaded against "Officers" from Manhattan North Impact Response Team.

With regard to the officer who was discourteous, threatened force, and used offensive language: § 87(2)(b) stated that the offending officer was a white male in uniform, who was a sergeant, and who wasn't the officer who issued him his summonses. This description matches Sgt. Zweben. Therefore, Allegations C, D, E and F are pleaded against Sgt. Zweben.

### **Allegations Not Pled**

§ 87(2)(b) alleged that, aside from tackling him (Allegation B), an unknown officer stepped on his shoulder and put his knee against his neck. However, separating the allegations would not be helpful, particularly because they took place during a series of continuous actions. Therefore, all force allegations will be incorporated into Allegation B.

§ 87(2)(b) alleged that, aside from showing his baton as a way to threaten him (Allegation D), Sgt. Zweben also verbally threatened to break his knees and to lock him up so he couldn't get medical treatment. Because treating these two additional allegations separately does not assist the investigation in making a determination, they will be incorporated into Allegation D.

### **Investigative Findings and Recommendations**

#### **Allegation A – Abuse of Authority: Sgt. Zweben stopped § 87(2)(b)**

With regard to why § 87(2)(b) was stopped:

- In his intake statement and in his in-person statement, § 87(2)(b) could not account for why the officers stopped him, but in both statements he did acknowledge that he was holding a clear plastic cup with a straw and lid, filled with a colorful liquid.
- Sgt. Zweben stated that § 87(2)(b) walked by holding a cup, out of which came the odor of Hennessy. § 87(2)(b) was approximately ten feet away from the officers.
- PO Kremer observed § 87(2)(b) with a plastic cup without a straw or lid. The liquid inside the cup was brownish-red, which is the same color as Hennessy cognac. The cup was the same type as those distributed by nearby clubs.
- Neither PO Gidarisingh nor PO Walton made the observation of a potential open container that led to the stop.
- The UF-250 for the incident stated that § 87(2)(b) was stopped because he was suspected of CPW.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

The question then becomes whether the officers had reasonable suspicion to stop § 87(2)(b)

§ 87(2)(b)

According to People v. De Bour, 40 N.Y.S. 2d 210 (1976) (encl 0A-M), an officer must have a specific and objective basis for suspecting an individual of criminal behavior. An officer must indicate specific and articulable facts that reasonably prompted the stop. Hunches or gut feelings are not sufficient.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### **Allegation B – Force: Officers used physical force against § 87(2)(b)**

With regard to what force was used:

In his intake statement, § 87(2)(b) claimed that PO Walton took him to the ground and then that PO Walton, PO Kremer and PO Gidarisingh and Sgt. Zweben all beat him. He further alleged that one of the above-listed officers stepped on his neck. As a result of the altercation, § 87(2)(b) sustained a cut to his head and his right elbow.

In his in-person statement, § 87(2)(b) claimed that PO Walton grabbed his shirt, while PO Kremer, PO Gidarisingh and PO4 put him in a bear-hug and all four of the officers took him to the ground while Sgt. Zweben watched. § 87(2)(b) landed face-first on the ground. At one point, while he was on the ground, an unknown officer stepped on his back and at another point, an unknown officer had his knee on § 87(2)(b)'s neck. As a result of the altercation, § 87(2)(b) sustained a cut to his head and his right elbow.

§ 87(2)(b) did provide photographs that corroborated his injuries, however, he did not provide the photos until a month-and-a-half after the incident, they were not time-stamped, and there was no way for the investigation to verify their authenticity.

All four officers stated that § 87(2)(b) was never tackled nor taken face-first to the ground forcefully, but rather that, when he continued to be argumentative with the officers, he was forcibly handcuffed and placed on his buttocks against a nearby wall, so that he was in a seated position. According to all four officers present, § 87(2)(b) was never prone on the ground, nor did he ever incur any injuries during the incident, nor was he ever seen to be bleeding.

While the photographs § 87(2)(b) provided are compelling, they are not enough evidence to discount the officers' statements, particularly because § 87(2)(b) himself provided the photographs.

§ 87(2)(b), § 87(2)(g)



All the officers denied that Sgt. Zweben used the word “nigger-beater.”

§ 87(2)(b), § 87(2)(g)

**Allegation F – Offensive Language: Sgt. Howard Zweben made remarks to § 87(2)(b) based upon ethnicity.**

§ 87(2)(b) alleged that Sgt. Zweben made derogatory remarks about his being Hispanic, repeatedly called him “§ 87(2)(b)” as a form of taunting and repeatedly asked him if he had a Green Card, as another form of taunting.

§ 87(2)(b), § 87(2)(g)

However, there does exist circumstantial corroborative evidence that such an incident may have taken place: both summonses issued to § 87(2)(b) as well as the UF-250 documenting the stop list § 87(2)(b) as “§ 87(2)(b)” or “§ 87(2)(b)”

§ 87(2)(b) claimed this error took place because Sgt. Zweben would not stop calling him “§ 87(2)(b)” and so that was what PO Kremer wrote on his summonses, despite § 87(2)(b)’s protests.

Furthermore, PO Kremer § 87(2)(g). On the UF-250, he wrote that § 87(2)(b) identified himself verbally, whereas during his in-person statement he claimed that § 87(2)(b) provided a work ID as his identification, which PO Kremer used to run a warrant check. (Records indicate that no warrant checks were run on § 87(2)(b) nor “§ 87(2)(b)” on the date in question.)

§ 87(2)(b), § 87(2)(g)

Team: \_\_\_\_\_

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Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_

Title/Signature

Print

Date